IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 8958 of 2004

Between:

Chaitanya Grameena Bank S.C. & S.T. Employees Welfare Assn.,
Regd.No.185, Guntur, represented by its General Secretary,
D.Ratna Kumar, s/o. Sunder Rao, Scale-I Officer, Mangalagiri
branch, Guntur dist.

..... PETITIONER

AND

The Chairman, Chaitanya Grameena Bank, Head office, Guntur.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of writ of Mandamus, declaring the circular No.3, Ref No.3/2,
dt.23-4-2004 issued by the Respondent is illegal and unconstitutional to the extent of not providing rule of reservation to the Schedule Castes and scheduled Tribes and not specifying the number of posts available for the said classes and consequently direct the respondent to provide 9 posts of MMGS-II and one post of MMGS-III available to officers belonging to schedule castes and Scheduled Tribes.

Counsel for the Petitioner: MR.T.SURYA KARAN REDDY

Counsel for the Respondent: MR.NUTY RAM MOHAN RAO

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 8958 of 2004

O R D E R :

Heard Sri T.Suryakaran Reddy, learned counsel appearing on behalf of the petitioner and Sri Nooti Rama Mohana Rao, learned counsel appearing on behalf of the respondent.

The petitioner herein, which is an Employees Welfare Association, filed this Writ Petiton, *inter alia*, seeking for a Writ of Mandamus to assail validity of the Circular No.3, Ref. No.3/2, dated 23.04.2004 issued by the respondent herein since there being no provision for reservation to the Scheduled Castes and Scheduled Tribes, and consequently direct the respondent to provide 9 posts of MMGS-II and one post of MMGS-III available to officers belonging to Scheduled Castes and Scheduled Tribes.

The case of the petitioner, in brief, is that the petitioner is a registered association and the same was formed for protecting the rights of Scheduled Castes and Scheduled Tribes in the respondent bank. The impugned circular issued by the respondent, *ex facie*, does not provide any reservation for Scheduled Castes and Scheduled Tribes. It is stated that under the impugned circular, the respondent is trying to fill up 18 posts from Junior Management Grade Scale (for short, 'JMGS')-I to Middle Management Grade Scale(for short, 'MMGS')-II and 2 posts from MMGS-II to MMGS-III in the officer cadre. It further states that the process for effecting promotions shall be in accordance with the new rules of Government of India Regional Rural Banks (Appointment and promotions of officers and other employees) Rules, 1998 (for short, 'the Rules, 1998'), and also in terms of the Directives given by the National Bank for Agriculture and Rural

Development (for short, 'NABARD') and the Government of India. However, the said Circular restricts the basis for promotions only on seniority-cum-merit rule and does not specify the posts which have been reserved for Scheduled Castes and Scheduled Tribes. It is further pointed out that the respondent had already filled 29 posts of MMGS-II, which include one Scheduled Caste candidate, though not on the basis of the reservation quota but purely on the basis of seniority. Having regard to the number of posts now announced, in terms of the Rule of Reservation, 15% quota viz.

7 posts, have to go to Scheduled Caste (for short, 'S.C.') candidates, and 2 posts, as per 7.5% quota, should go to Scheduled Tribe (for short, 'S.T.') candidates. According to seniority list dated 11.04.2004 in JMGS-I, 9 Scheduled Caste eligible candidates are available and they are fully eligible for such scale-II posts. Even in the cadre of MMGS-III, 2 posts are notified, of which one has to go to S.C. candidate. It was further pointed out that there are in all 50 branches, of which 47 branches are categorised for scale –II officers. Once these posts are filled up, there will not be any further promotions in MMGS-II since there are no categorised branches for such scale-II officers. The only condition imposed in the impugned circular for promotion to the scale-III officers is seven years' of experience. It is also pointed out that in fact, none of the officers has been confirmed so far and in spite of the same, the respondent is trying to consider their cases in the process of effecting promotions under the impugned circular. It was reiterated that as per Rule 12 of the Rules, 1998, dated 29.07.1998, it is contemplated that there shall be reservation for the S.Cs., S.Ts. and other categories of persons in such promotion as may be prescribed by the Central Government from time to time. Further, even as per the instructions dated 23.11.2000 issued by the NABARD, it was contemplated to follow the policy to provide 15% reservation to S.Cs. and 7.5% to S.Ts. in promotion to all classes of posts/services made on the basis of seniority subject to fitness, in which the element of direct recruitment, if any, does not exceed 75%. The Government of India also through its Directives issued on 27.11.1972 prescribed for providing

reservation to S.Cs. and S.Ts. in promotions on the basis of seniority subject to fitness. In view of the same, it is stated that having regard to the fact that the circular is totally silent in this aspect, which is not only contrary to the aforesaid Directives issued by the competent authorities, which are very much binding on the respondent, but also violative of Article 16(4A) of the Constitution of India. The petitioner further states that it has submitted a detailed and comprehensive representation on 08.05.2004 and 09.12.2003 to the respondent for giving effect to such reservation, but the same is pending and no action has been taken nor any orders are passed thereon. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the respondent herein, there is no dispute in regard to the cadres as pointed out by the petitioner and also the concerned Rules providing for promotion including as to issuance of impugned circular by the respondent herein. However, it is pointed out that all the 29 posts in the cadre of MMGS-II, already one S.C. candidate was promoted and no S.T. candidate was available. It is further stated that having regard to the decision taken in a meeting held on 30.09.2002 with the Chairman of the Regional Rural Banks, implementation of reservation policy as enunciated by the Government of India in the Regional Rural Banks was reviewed and the same was affirmed. However, it was expressed that there are no such eligible candidates available for promotion. On a consensus, it was agreed that the reservations would be applicable in promotion from JMGS-I to MMGS-II and MMGS-II to MMGS-III, besides any other categories. However, it is stated that in the impugned circular, it is stated that promotion from MMGS-II to MMGS-III is purely on seniority-cum-merit basis. The main submission made on behalf of the respondent in the counter affidavit is that there is no direct recruitment provided for the post of MMGS-II and MMGS-III cadres and the appointments to these posts is 100% by promotion only. Therefore, rule of reservation is inapplicable in such matters since there is no element of direct recruitment in it. Further, it is also pointed out that non-confirmation of the candidates would not come in the

way of considering their case and it is only due to administrative reasons, formal orders are not issued and therefore, all such candidates after completion, are fully eligible for promotion in terms of the impugned circular. It was further pointed out that in the year 1995, promotions to MMGS-II cadre were made, which was challenged in Writ Petition No. 10500 of 1995. However, the same was allowed as per orders of this Court on 11.07.1997 directing the respondents to prepare seniority list afresh in accordance with the ranking given by the selection committee and finalise the selection on that basis. The said order was also confirmed in appeal by a Division Bench of this Court in Writ Appeal No. 1181 of 1997 as per order dated 31.10.1997. Accordingly, the respondent revised the seniority list and on that basis, promotions were given effect to. However, once again, a challenge was made in Writ Petition No. 7665 of 2000 wherein this Court granted interim direction not to confirm the service of the contesting respondents and subsequently, the same was modified on 19.04.2001 to the effect that any promotions made shall be subject to the outcome of the Writ Petition and the said Writ Petition is still pending. In regard to the statement made by the earlier advocate appeared on behalf of the respondent, it was submitted that the same was inaccurate statement and it was sought to be clarified. In view of the aforesaid reasons, it is stated that the Writ Petition is liable to be dismissed.

Sri T. Suryakaran Reddy, learned counsel appearing on behalf of the petitioner mainly submitted that having regard to the rule position and also the Directives issued both from NABARD and the Government of India, the respondent can not absolve from providing reservation to the S.C. and S.T. candidates and the impugned circular is totally silent in this regard, and hence, the same is liable to be set aside.

Sri Nooti Rama Mohana Rao, learned counsel appearing on behalf of the respondent by placing reliance on the very same rules, submitted that having regard to the fact that there was no direct recruitment provided for MMGS-II and MMGS-III posts, and hence, the rule of reservation does not arise. He further clarified that it is only where

such direct recruitment is provided and if it does not exceed 75% , the provision for reservation steps in and otherwise not.

Considering these and other submissions as made from both sides, the question which remains to be considered in this case is as to whether on the facts and circumstances, a provision for reservation to S.C. and S.T. candidates should be made for promotion to the posts of MMGS-II and MMGS-III in the respondent bank ?

There is no serious dispute in regard to the governing rules in this case and also the directives issued by the NABARD and the Government of India. The Rule 12 of the Rules, 1998 specifically contemplates provision of reservation for S.C. and S.T. candidates and other categories at the stage of promotion. The same also gets reiterated as per the proceedings of the NABARD dated 23.11.2000 and further gets affirmed by the instructions issued by the Government of India on 27.11.1972. However, the only objection raised on behalf of the respondent through its counter affidavit and also in the submissions made across the bar, is to the effect that the present promotions are being effected only from amongst the employees from lower cadre to higher cadre, and there being no direct recruitment to the aforesaid posts, rule of reservation does not apply. For convenience sake, the concerned provision is extracted hereunder:

> "Promotions on the basis of seniority subject to fitness:
>
> As indicated in para 2.1 (iii) (c), there is a reservation of 15 per cent and 7 ½ per cent of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made on the basis of seniority subject to fitness in appointments to all Group A, Group B, Group C and Group D (Class I, Class II, Class III and Class IV) posts in grades or, services in which the element of direct recruitment, if any, does not exceed 75 per cent".

The aforesaid Rule also refers back to the proceedings of the Government of India dated 27.11.1972 and also 25.02.1976. What all it contemplates is that reservation as provided thereunder, has to be made on the basis of seniority subject to fitness nor such posts, in which element of direct recruitment, if any, does not exceed 75%. The very clarifying expression as added in the latter portion of the Rule itself applies to the situation where the provision is also made for direct recruitment, but it does not include the very applicability of the rule of reservation even where such another source is added. However, the extent of reservation is sought to be restricted even in such situation to the case where it does not exceed 75%. It is only the maximum as contemplated, but not any minimum, much less any total exclusion. Therefore, it follows that wherever any promotion is contemplated from one cadre to the other, necessarily the reservation has to be applied and the respondent can not take any shelter on the ground that there being no such direct recruitment. On the fact of it, the very approach of the respondent herein in totally excluding reservation to either of the castes or such other categories to which it has to be applied, is wholly in the teeth of not only Rule 12 of the Rules, 1998, but also the directives issued by the NABARD and the Government of India, apart from being violative of the mandate as provided under Article 16 of the Constitution of India.

However, having regard to the fact that the very policy as such in question where certain categories are sought to be excluded and especially when the petitioner which is a responsible association speaking on behalf of their own employees, has already submitted comprehensive representatives on 08.05.2004 and 09.12.2003, which are still kept pending without consideration or passing any orders thereon, it is more apt in the circumstances to consider the same from a proper perspective in terms of the aforesaid directives as given, and take a decision for giving effect to the reservation as contemplated thereunder.

The Writ Petition is, accordingly, allowed. Impugned circular dated

23.04.2004 is set aside subject to the above observations and directions as given. It shall be open for the respondent to issue fresh circular in terms of the directives and policy as pointed above. No costs.

(B.Prakash Rao, J.)

07.03.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on Monday the seventh day of March two thousand and five.

… Registrar

Copy to:

1) The Chairman, Chaitanya Grameena Bank, Head office, Guntur.

2) Two CD copies.